Supreme Court, U.S.
FILED
MAY 1 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-759

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

STATE OF MARYLAND,

Petitioner,

v.

HAROLD GARRISON,

Respondent.

ON WRIT OF CERTIORARI TO THE
COURT OF APPEALS OF MARYLAND

JOINT APPENDIX

STEPHEN H. SACHS,
Attorney General of Maryland,

*DEBORAH K. CHASANOW,
Chief, Criminal Appeals,

ANN E. SINGLETON,
Assistant Attorney General,

Seven North Calvert Street,
Baltimore, Maryland 21202,
(301) 576-6422,

Counsel for Petitioner.

*GERALD A. KROOP,

Court Square Building,
Suite 502,
Calvert & Lexington Streets,
Baltimore, Maryland 21202,
(301) 547-1670,

Counsel for Respondent.

**Counsel of Record*

Petition for Certiorari Filed November 1, 1985
Certiorari Granted February 24, 1986

48 pp

TABLE OF CONTENTS

Page

Chronology.....1

What may be found in the Appendix to the Petition for Writ of Certiorari....3

Exhibits:

Application for Search and Seizure Warrant.....4

Affidavit.....5

Search and Seizure Warrant.....9

Attachment to Return of Search Warrant.....10

Transcripts:

Testimony at Motions Hearing.....11

Trial Court's Ruling.....40

No. 85-759

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1985

STATE OF MARYLAND,

Petitioner

v.

HAROLD GARRISON,

Respondent

ON WRIT OF CERTIORARI TO THE
COURT OF APPEALS OF MARYLAND

JOINT APPENDIX

CHRONOLOGY

Date	Event
May 21, 1982	Search and seizure pursuant to Warrant
October 29, 1982	Indictment
December 2, 1982	Motion to Suppress filed

March 2-3, 1983	Hearing on Motion to Suppress
March 17, 1983	Motion to Suppress denied
March 18, 1983	Trial and Sentencing
March 18, 1983	Order for Appeal
April 10, 1984	Opinion of the Court of Special Appeals filed
May 25, 1984	Respondent Garrity's Petition for Writ of Certiorari filed
September 11, 1984	Certiorari granted by Court of Appeals
June 27, 1985	Opinion of the Court of Appeals filed
July 12, 1985	Petitioner State of Maryland's Motion for Reconsideration filed

September 3, 1985	Denial of Motion for Reconsideration and Mandate filed
November 1, 1985	State of Maryland's Petition for Writ of Certiorari filed
February 24, 1986	Certiorari granted

WHAT MAY BE FOUND IN THE APPENDIX TO THE PETITION FOR WRIT OF CERTIORARI

Opinion of the Court of Special Appeals of Maryland filed April 10, 1984.....1 APC

Opinion of the Court of Appeals of Maryland filed June 27, 1985.....28 APC

Diagram of 2036 Park Avenue, Third Floor, Exhibit at Motions Hearing.....44 APC

SUPREME BENCH
OR
DISTRICT COURT OF MARYLAND
DISTRICT I
BALTIMORE CITY

Operations Bureau
Application for Search and Seizure Warrant
Police Department Form 77/188

To the Honorable Judge I. Sewell Lamdin of the District Court of Maryland: the undersigned being duly sworn deposes and says that he has reason to believe that on the person of Lawrence Meril McWebb, described as a black male, date of birth 12/20/31, B. of I. #108-147, 5'11" tall, weighing about 150 pounds, a.k.a. "Red Cross," [and] that on the premises known as 2036 Park Avenue third floor apartment, Baltimore, Maryland described as a three story brick dwelling with the numerals 2-0-3-6 affixed to the front in the City of Baltimore there is now being concealed certain property, namely: Marihuana, related paraphernalia monies books photographs and papers pertaining to the illegal distribution of marihuana which is in violation of the Laws of Maryland pertaining to the illegal storing, concealing and selling of Marihuana in violation of the Narcotic Laws of Maryland pertaining to Article 27 Sections 276 through 302 of the Annotated Code of Maryland.

AND that the facts tending to establish grounds for issuance of Search Warrant are set forth in the Affidavit attached thereto and made a part thereof.

WHEREFORE your affiant prays that a Search and Seizure Warrant be issued for said Lawrence Meril McWebb, black male, date of birth 12/20/31, described as being 5'11" tall, weighing 150 pounds, B. of I. 108-147, a.k.a. "Red Cross," 2036 Park Avenue third floor apartment, Baltimore, Maryland described as being a three story brick dwelling with the numerals 2-0-3-6 affixed to the front of same.

DET. ALBERT MARCUS /s/

Detective, Baltimore Police Department

SWORN to before me and subscribed in my presence this 21st day of May 1982.

I. SEWELL LAMDIN /s/,
Judge.

AFFIDAVIT

Affidavit in support of a search and seizure warrant for the person of:

Lawrence Meril McWebb, described as a black male with a date of birth of 12/20/31, about 5'11" tall, weighing about 150 pounds, B. of I. number 108-147 with a street name of "Red Cross".

For the premises of:

2036 Park Avenue, third floor apartment Baltimore, Maryland. Described as a three story brick dwelling with the numerals 2-0-3-6 on a wood plack affixed to the front of the building.

By:

Detective Albert Marcus who is a duly Constituted member of the Baltimore Police Department and has been a Police Officer for over seven (7) years during which time your Affiant has worked both uniform and plainclothes. Your Affiant Marcus has been the arresting or investigating officer in the arrest of over 800 eight hundred individuals for various violations of the narcotic laws of Maryland. Your affiant Marcus has been the Affiant for over seventy (70) search and seizure warrants and at the time of execution of those warrants various amounts of heroin, cocaine, P.C.P., L.S.D., Valium, and Marihuana were seized. Your Affiant Marcus has attended and successfully completed both the three day seminar and the two week course on Controlled Dangerous Substances and its violators sponsored by the drug enforcement administration. Your Affiant Marcus is familiar with the methods of manufacturing, packaging, concealing and storing and selling of Controlled Dangerous Substances and also familiar with the terminology used in those illegal transactions.

During the third week of May 1982 (between May 16, 1982 and May 21, 1982) your Affiant Marcus met with a proven Confidential Reliable Informant (herein referred to as Informant PC #222) who is known to your Affiant and is considered to be reliable due to the fact that this informant PC #222 has been supplying Information to the police. As a result of this Information two (2) search and seizure warrants for narcotics were obtained and at the time of execution various amounts of Controlled Dangerous Substances were seized. Additionally six (6) search and seizure warrants for crimes against property were obtained and at the time of execution various stolen goods were

5/21/82 JSL

AFFIDAVIT PAGE TWO

seized. As a result of those eight (8) search and seizure warrants a total of twelve (12) individuals were arrested for violations of the narcotics laws of Maryland and for violation relating to Burglary. thus far ten (10) of those individuals arrested have been tried and found guilty the remaining two (2) are presently awaiting trial in the Criminal Court system of Baltimore City. This Informant PC #222 has supplied information to Detective Constantain as recently as the third week of May 1982 (between May 16, 1982 and May 21, 1982) and this information when check was found to be true and correct to the best of Det. Constantain's knowledge and that investigation is continuing. This Informant PC #222 is a drug user and is familiar with the methods of packaging, concealing, storing and selling of Controlled Dangerous Substances and also familiar with the terminology used in those illegal transactions.

During the above mentioned meeting with Informant #222, the Informant stated that he/she knew a subject by the name of "Red Cross", who was selling Marihuana out of his apartment located at 2036 Park Ave. third floor. The Informant PC#222 went on to describe the subject "Red Cross" as a black male about 5'10" to 5'11" tall thin build about fifty (50) years of age and described the premises of 2036 Park Ave. as being a brick dwelling and having the numbers on the front of the building. Informant PC #222 went on to say that he/she knew this to be true due to the fact that the Informant PC#222 has known the subject "Red Cross" for over six months and during that time the Informant PC#222 states that he/she would go to the premises of 2036 Park Ave. and ring the front bell. The subject "Red Cross" would answer the front door and ask the Informant how much Marihuana he/she wanted to purchase. The Informant PC#222 would advise the subject "Red Cross" of the amount of Marihuana desired the subject "Red Cross" would then invite the Informant PC#222 up into his third floor apartment. At that time the Informant states that the subject "Red Cross" would give the Informant the amount of Marihuana he/she requested and the Informant would hand the subject "Red Cross" the amount of money required. The Informant PC#222 states that he/she has purchased Marihuana from the subject "Red Cross" within the last twenty four (24) hours of this affidavit for his/her own personal use. The Informant went on to say that he/she knew the substance purchased from the subject "Red Cross" to be Marihuana

5/21/82 JSL

AFFIDAVIT PAGE THREE

due to the fact that when the Informant PC#222 smoked the substance purchased from "Red Cross" that he/she reached the same euphoric effect that the Informant PC#222 has obtained in the past from the use of Marihuana.

Upon receiving the above information from the proven confidential reliable informant PC#222 your Affiant Detective Marcus went to the premises known as 2036 Park Avenue and found it exactly as the Informant PC#222 had described as a three story brick dwelling with the numerals 2-0-3-6 affixed to the front of the premises. Further your Affiant made a check with the Baltimore Gas and Electric Company and discovered that the premises of 2036 Park Ave. third floor was in the name of Lawrence McWebb. Your Affiant Marcus then checked with the Baltimore Police Department and discovered that there was a subject by the name of Lawrence Merial McWebb, black male date of birth 12/20/31 with an address of 2036 Park Ave. third floor who had been arrested in the past with a B. of I. number of 108-147. Acording to arrest records the subject McWebb is described as being a black male 5'11" tall weighing 150 pounds. This was exactly as described by Informant PC#222,

A photograph of the subject Lawrence Meril McWebb B. of I. 108-147, was obtained and showned to Informant PC#222 at which time the Informant PC #222 positively identified the subject and stated that it was a photograph of the same subject "Red Cross" from who he/she purchased Marihuana from as recently as within the last twenty four hours.

No controlled and supervised purchase of Marihuana was requested of the Informant or attempted due to the fact that the apartment is located on the third floor of the premises and it would be impossible to keep the Informant under constant observation during the purchase thus making the purchase tainted. Additionally no observations of the apartment were conducted due to the fact that it would again be impossible to tell which apartment the individuals would enter.

Your Affiant Detective Albert Marcus feels that sufficient probable cause exist in that the subject Lawrence Meril McWebb is using, renting or occupying the premises of 2036 Park Avenue third floor apartment for the purpose of ilegally concealing, storing, and selling of Controlled Dangerous Substances in Violation of the

5/21/82 ASL

AFFIDAVIT PAGE FOUR

narcotic laws of Maryland based on the Information supplied by the confidential reliable informant PC#222, and pray that a Search and Seizure Warrant be issued for the above named and described person and premises.

DET. ALBERT MARCUS /s/

Affiant Det. Albert Marcus

SWORN to before me and subscribed to in my presence this 21st day of 1982.

I. SEWELL LAMDIN /s/,
Judge.

SUPREME BENCH
OR
DISTRICT COURT OF MARYLAND
DISTRICT I
BALTIMORE CITY

Operations Bureau
Search and Seizure Warrant
Police Department Form 77/187

To: Any Police Officer of Baltimore City:

Affidavit having been made before me by Detective Albert Marcus, Baltimore Police Department, Narcotic Unit, that he has reason to believe that on the person of Lawrence Meril McWebb, described as a black male, date of birth 12/20/31, B. of I. #108-147, 5'11" tall, weighing 150 pounds, a.k.a. "Red Cross," [and] that on the premises known as 2036 Park Avenue third floor apartment, described as a three story brick dwelling with the numerals 2-0-3-6 affixed to the front of same in the City of Baltimore, there is now being concealed certain property, namely: Marihuana, related paraphernalia, minies, books, papers, and photographs pertaining to the illegal distribution of Marihuana which is in violation of the Laws of Maryland pertaining to the illegal storing, concealing, and selling of Marihuana in violation of the Narcotic Laws of Maryland pertaining to Article 27 Sections 276 through 302 of the Annotated Code of Maryland and I am satisfied that there is probable cause to believe that the property so described is being concealed on the person/premises above described and that the foregoing grounds for application for issuance of the search warrant exist.

You are therefor commanded, with the necessary and proper assistants, to search forthwith the person/premises hereinabove described for the property specified, executing this warrant and making the search; and if the property be found there, to seize it, and if upon execution of this warrant, there are found persons then and there engaged in the commission of a crime, arrest those so participating; leaving a copy of this warrant with an inventory of the property seized and returning copy of said warrant and inventory, if any, to me within five days after execution of this warrant; or, if not served, to return this warrant to me within five days after its expiration, as required by law.

Dated this 21st day of May, 1982.

Signed I. SEWELL LAMDIN /s/,
Judge.

May '82

At the time of execution of the attached search and seizure warrant Lawrence McWebb was stopped outside of the premises and walked up to the third floor. As the key was placed into the lock of the third floor the door was opened by Harold Garrison Jr. who was dressed in night clothes. Upon entering the premises it gave the appearance of being one apartment with all doors being open giving free access all the way through the entire third floor. Closer inspection revealed that the third floor was equiped to accommodate two seperate apartments with a living room, bedroom, kitchen and bathroom in the front part and the same in the rear part. Located in the rear bedroom of Lawrence McWebb was papers in the name of Harold Garrison. While at the premises the telphone rang in the front bedroom (Harold Garrison) when answered the subject on the phone asked for "Red Cross" who is Lawrence McWebb and had a seperate telephone in his rear bedroom.

Based on the appearance upon entering, and evidence recovered in the bedroom of Lawrence McWebb it is believed that although the third floor is divided into two seperate apartments both McWebb & Garrison have free access to the entire third floor and share a common interest in both apartments.

5/24/82 JSL

TRANSCRIPTS

Testimony at Motions Hearing
March 2, 1983

[M. 13-29]

DETECTIVE RUSSELL SHFA

DIRECT EXAMINATION BY MRS. HOCHBERG, ASSISTANT STATE'S ATTORNEY:

Q. Were you working on the 21st of May, 1982?

A. Yes, ma'am.

Q. Did you have occasion to execute a search and seizure warrant for the premises 2036 Park Avenue?

A. Yes.

Q. Is that in Baltimore City?

A. Yes, ma'am.

Q. Who was the warrant for?

A. It was for Lawrence McWebb, also known as Red Cross, and the premises of 2036 Park Avenue, third floor.

Q. What kind of premises is it?

A. It's in a group row home, three stories, broken down into apartments.

Q. And at the time of the warrant, before the execution, did you know how many apartments were contained in the premises?

A. No, ma'am.

Q. Could you please describe how the apartment is set up, regarding the front door and how you get in and out.

A. At this time, the 21st of May, we were going to conduct a search with a search and seizure warrant. There is a common door you have to open. Apparently all the residents have keys. Then you have to go up a series of steps to go up to the third floor. We didn't want to knock down that door.

Q. Which door?

A. The main common door. Apparently, the other people in the apartment wouldn't have security. Number two, if the person on the third floor heard the door knocked in, he might destroy the evidence.

Q. Was that front door locked?

A. Yes.

Q. Was there any mail boxes on the first floor?

A. Yes.

Q. Did you have occasion to look at them?

A. Yes. I put a type of construction hard hat on as a ruse and I went there, hoping someone on the first floor would open that door. As I came in the front door, there is a series of several mailboxes, like apartment mailboxes. There are seven individual mailboxes. On the bottom is a bell for each mailbox. Above the bell is a slot to see if you have any mail. And above that are names of the residents.

Q. Were you able to see the names clearly on the mailboxes?

A. When I looked the 21st of May, I was looking for Mr. McWebb's name because that's the bell I didn't want to ring. I wanted to ring somebody on the first floor, but I couldn't figure out where the first floor bells were, so I rang all seven of them.

Q. Why couldn't you figure out where the first floor bells were?

A. At the time they weren't marked and I didn't know anybody's name on the first floor.

Q. Were there any numbers indicating the various apartments?

A. Not that I can see.

Q. In the meantime, did you see Mr. McWebb's name listed on the mailbox?

A. No, ma'am.

Q. For that matter, did you see anybody's name by the name of Garrison on the mailbox?

A. I don't recall if I did.

Q. Do you know whether there is an apartment in the basement?

A. That I really don't know.

Q. So far as you know, do you know how many apartments were on each floor?

A. In all there were — All I know, there were seven mailboxes and seven bells. There was another

bell over to the side. I imagine it was the original bell before the place was split up into apartments.

Q. Above any of the mailboxes did you see any numbers?

A. I couldn't figure out any numbers at all.

Q. Did you eventually gain entrance into the apartment?

A. I rang all the bells. No one answered the door. I knocked on the door. No one answered the door.

Q. Did you have occasion to finally enter the apartment?

A. Yes. Mr. McWebb pulled up in a car. Detective Marcus had the tag number. By this time I had gained access. The rest of the raid party came around to the car. Mr. McWebb pulled up. He parked his car. He opened the front door and we went up the steps with him and he opened the third floor door.

Q. Could you please describe the setup on the third floor.

A. You go up the steps. On a normal row house steps, they go on angles. You go all the way up the steps, there is a wooden door. Mr. McWebb put his key in and opened his door. When you go in through the door, you go into what I call a foyer area. I have a diagram. You go into a hallway or foyer area. After Mr. McWebb opened that door up, Mr. Garrison was standing in the hallway area in pajamas and half a body cast.

Q. All right. Would you please detach that.

A. Sure.

MRS. HOCHBERG: For purposes of the motion, I'd like to have the diagram marked as State's Exhibit Number 2.

(Shown to defense counsel.)

MR. POLANSKY: May I have a moment to look at this to see if I make an objection.

Thank you.

(Diagram was thereupon marked as State's Motion Exhibit Number 2 in evidence).

BY MRS. HOCHBERG:

Q. By the way, as you were entering the apartment, did you stop on any of the other floors?

A. No, ma'am.

Q. Do you know how many apartments were on each and every floor?

A. No, ma'am.

Q. When you got to the third floor, you said—

A. Mr. McWebb had a set of keys. I don't recall if I opened the door or someone did, but the door became open with the use of a key.

Q. Would you please describe the setup of the apartment on the third floor?

A. You walk in and you're in this little hallway or foyer area. You look to the left and you can see all the way to the very far wall on the house. You look to the right, you look through, and I saw a bedroom and a bed and a dresser and that was the other side of the home, the front and the back of the house.

Q. How many doors were there to get into the apartment itself?

A. There was that one main door, that which we opened with the use of Mr. McWebb's key. The rest of the apartment, if you looked up, you can see any way you looked.

Q. How many doors were there to get into the apartment?

A. Just that one main common door downstairs all the way up, and I didn't see any more doors.

Q. When you finally get to the third floor and open up the common door and get into the hallway door, how many other doors are there to get into the apartment?

A. At the time I looked in, I didn't see any.

Q. You didn't see any doors at all?

A. No.

Q. Can you please describe what you saw.

A. I looked to the left and I saw what looked like a living room-dining room area.

Q. The living room, dining room. Were the premises eventually identified?

A. Yes. Mr. McWebb's living room-dining room area.

Q. That is the left side?

A. Yes.

Q. What else did you see?

A. To the right I saw a bedroom. I looked through a doorway and saw a little foyer and — I looked through and saw a foyer, a double bed and a dresser in the bedroom.

Q. Were there any doors when you originally looked through?

A. I didn't see any originally.

Q. Did you eventually determine if there was a door?

A. Yes, there was a door.

Q. Could you please describe how the door is situated.

A. As I am looking from the little foyer area into that bedroom, the door was swung all the way to the back and there were some clothes hanging over it.

Q. In other words, the door didn't open into the hallway?

A. It opened into the bedroom. I couldn't see it when I originally looked.

Q. Continue. What else did you see?

A. There were some clothes hanging on the door. It took me a little while to find it. When I took the clothes off, I found it had a dead bolt lock on it.

Q. Could you see the lock on the door?

A. No, I didn't see it until I took the clothes off.

Q. Do you remember if there were any numbers on the door?

A. I don't recall seeing any numbers on the door, no.

MRS. HOCHBERG: If I can have Detective Shea mark the diagram.

Q. Detective Shea, I am going to show you what's been marked as State's Exhibit Number 2, the diagram. Could you please mark what you have just described. You said there were two doors once you walk into the hallway. Could you please describe what you saw to the left side?

A. To the left side it was a doorway, but I couldn't see a door because the door was pushed back.

Q. All the way back?

A. Yeah, from my view.

Q. I do see a line there. Does that indicate a door?

A. Yes, it is.

Q. Was that the position of the door?

A. The door was all the way against this back wall.

Q. Will you draw a line indicating the position of the door. Could you also mark as to whose apartment that was identified as.

A. Mr. McWebb's.

Q. Okay. Could you describe what you saw to the right side.

A. There is a doorway. This door was all the way against this wall here. This is —

Q. It's already been marked.

A. Yes, ma'am.

Q. Is that the door where the clothing was covering?

A. Yes. It was hanging from the top of the door on clothes hangers.

Q. During your search of that apartment, what, if anything, unusual happened?

A. Mr. Garrison had a telephone sitting on his dresser in his bedroom and it rang. So I answered it, and I just said hello. They said, is —

MR. POLANSKY: Objection.

THE COURT: Well, he said hello. Okay. Ask the next question.

BY MRS. HOCHBERG:

Q. What happened next?

MR. POLANSKY: Objection, Your Honor.

MRS. HOCHBERG: Your Honor, I think it is important to know the state of mind of the officers.

MR. POLANSKY: Actually not as to what somebody said on the phone. It is absolutely hearsay. At this point the question is, number one, whether the officers had any business being there and, secondly what his authority was to answer someone else's phone and, thirdly, assuming that you get by all that, what that unknown person said on the other end of the phone is certainly not admissible testimony. It is crucial at this point.

THE COURT: Well, do you want to say anything?

MRS. HOCHBERG: Yes, Your Honor. The issue is whether the officers knew or should have known that they were in another person's apartment where they had no business to be. The contents of the conversation were crucial as to the officer's understanding. It goes directly to the state of mind. Therefore it does come under the exception to the hearsay rule.

THE COURT: I am going to overrule the objection. You may tell us.

THE WITNESS: A female said, "Is Red Cross there?" And I said —

THE COURT: I didn't hear what you said.

THE WITNESS: A female said, "Is Red Cross there?" I said "No, he is in the bathroom." She said "Okay. I will call back." And I hung up the phone.

BY MRS. HOCHBERG:

Q. Do you know who Red Cross is?

A. That is the street name for Mr. McWebb.

Q. Did you find any evidence?

MR. POLANSKY: Objection. Totally above and beyond the scope of this motion, Your Honor.

MRS. HOCHBERG: There is a motion to suppress the evidence.

THE COURT: I am going to overrule the objection. I am not ruling on the motion anyway.

THE WITNESS: As I originally looked from the foyer hallway, which I described earlier, through that

door, which I didn't know was there, and into Mr. Garrison's bedroom, right on his dresser, the closer corner to the door was within less than four feet was a piece of newspaper and approximately a half ounce of brown leafy substance piled on that. From my experience I would suspect that to be marijuana.

BY MRS. HOCHBERG:

Q. What else was found in this apartment?

A. Also he had like, I call it a chest of drawers, but the first three are like — like a chest. They are open. They are shelves and the other two or three are drawers. In that was found ten glass[i]ne bags containing white powder and was turned over to the crime laboratory and tested and found to be schedule one.

THE COURT: Let's back up. You say the chest was — where was it when you opened the door?

THE WITNESS: The chest was against the wall here and it was like — the first three of them were shelves. You opened doors like this and the other two

or three drawers you pull out. I don't know what you call that.

THE COURT: Where did you find the glass[i]ne bags?

THE WITNESS: They were in the drawer, Your Honor.

BY MRS. HOCHBERG:

Q. What else did you find, if anything?

A. Marijuana cigarette. If I can refer to my notes. Marijuana cigarette was found on top of the dresser.

Q. Continue.

A. One manila envelope containing suspected marijuana, a green leafy substance, found in the bedroom in the dresser drawer, the top drawer of that thing I just described. Also there is a closet in Mr. Garrison's apartment where that door was resting against. I moved that door and opened the closet. There was an army field jacket, several suits of clothes and other leather jackets, stuff like that. I

searched through every pocket and I got to the army field jacket. I always feel the pockets before I put my hand in because I don't want to be stuck with a syringe or razor blade. And so I felt a bulge. I opened the coat and pulled out a paper bag. I unrolled the paper bag and there was five bundles of money, money folded in half with rubber bands around it. I counted the money. It was —

MR. POLANSKY: Objection, Your Honor.

THE COURT: Overruled.

BY MRS. HOCHBERG:

Q. Will you tell us how [much] money it was.

A. $4,940.

Q. Did you find any other —?

A. Also in that coat was a plastic bag containing three syringes and one cooker cap, the cap used to cook heroin for injection; also another cooker cap with suspected heroin residue was found in another coat in the same closet.

Q. Will you continue.

A. There was some personal papers, a couple of pieces of mail in Mr. Garrison's room.

Q. Is that the first place you searched?

A. No, ma'am.

Q. Where did you search first?

A. I went into Mr. McWebb's bedroom.

Q. Okay. Which side of the apartment was that as you enter on to the third floor?

A. To your left.

Q. When you entered, what, if anything, did you find and do?

A. I opened the top dresser drawer and I found a thirty-eight revolver and several shells loaded in the weapon. Also I found two gas and electric bills, one in the name of Mr. McWebb and one in the name of Mr. Garrison.

MR. POLANSKY: Objection, Your Honor.

THE COURT: Overruled.

MR. POLANSKY: Also I add to that the sufficiency of the warrant to it.

THE COURT: All right.

BY MRS. HOCHBERG:

Q. You found two gas and electric bills in the names of —?

A. Mr. McWebb and Mr. Garrison.

Q. Where was this found?

A. It was found in the top drawer of Mr. McWebb's dresser.

MR. POLANSKY: I also object to this. Obviously this testimony is being presented to prejudice the Court. I really protest, Your Honor, to the manner in which it is being presented.

THE COURT: All right.

BY MRS. HOCHBERG:

Q. What other evidence did you find, if anything?

A. Several pieces of personal mail and things like that in the top drawer. Also found — he had like a desk or a table in the right-hand corner. On that was a large plastic bag containing suspected marijuana and a

smaller plastic bag containing suspected marijuana. Also on the floor was a triple beam scale.

THE COURT: A what?

THE WITNESS: A triple beam scale.

THE COURT: What is that for?

THE WITNESS: It is used to weigh out drugs.

BY MRS. HOCHBERG:

Q. What else was found? Is this all the evidence you found in Mr. McWebb's apartment?

A. Also $310.00 of United States currency was found in that top dresser drawer, a paper bag with the name Red Cross written on it — It was an Avon bag — four papers in the name of Mr. McWebb on the bedroom table, which I described earlier, a box of paper was found on that same rear bedroom table, several large plastic bags containing suspected marijuana residue, a small telephone book. That's all.

Q. Were there any marijuana cigarettes found?

A. In the rear living room there was an ashtray full of numerous partially smoked marijuana

cigarettes.

I went in the kitchen and found a pie plate and put them in the pie plate so they wouldn't spill out.

Q. Was there any other marijuana on the premises?

A. That's all.

MRS. HOCHBERG: At this time the State would introduce on the motion the photographs indicating the evidence seized and chemical analysis just for purposes of the motion.

MR. POLANSKY: Just so it is clear, Your Honor, we are objecting to this not only regarding specifically different amounts but, again, because the inventory — there is no evidence at all regarding where or what was found and I submit it should be suppressed.

THE COURT: Overruled.

(Lab report and photos were thereupon marked as State's Motion Exhibit No. 3 in evidence.)

BY MRS. HOCHBERG:

Q. Detective, at any time did you come to determine that there was actually two apartments that you had entered instead of one?

A. Yes ma'am.

Q. Will you please describe that.

A. When I found that door I described earlier with the dead bolt lock on it, Sergeant Schanken was standing right near me. He saw it also. So I had gone through the hallway to the other side and he looked at this other door, Mr. McWebb's apartment door, this one right here, and he looked at it, and that also had the type of lock you have on your outside door, your entrance door. He told us to stop searching then.

Q. Do you know whether he walked through the apartment itself, the entire apartment?

A. Yes, he did.

Q. What, if anything, did he do that you know of in your presence?

A. He went to Mr. Garrison's phone and dialed 396-1757 and asked for John Prevas.

Q. The State's Attorney?

A. Yes.

Q. Do you know whether he spoke to Mr. Prevas?

A. He had a conversation with him.

* * * *

March 3, 1983

[M2. 52-55 and M2. 78]

DIRECT EXAMINATION OF DETECTIVE ALBERT MARCUS BY MR. POLANSKY, DEFENSE ATTORNEY

Q. Detective Marcus, May 21, 1982, you had an occasion to execute a warrant at 2036 Park Avenue, correct?

A. Yes, I did.

Q. I show you State's Exhibit Number 1. Is this the warrant, sir?

A. Yes, that is the original warrant, that's correct.

Q. Are you the affiant on this warrant?

A. Yes.

Q. Are you the only affiant on this warrant?

A. That's correct.

Q. You prepared the warrant?

A. That's correct.

Q. Now, you are totally familiar with the warrant; is that correct?

A. Yes, sir.

Q. Now, you were aware, having written that warrant, that 2036 Park Avenue was a multi-family dwelling or number of apartments there; is that correct?

A. That is correct.

Q. Did you know how many apartments were there?

A. No, I did not. I just wrote the warrant for the third floor.

Q. Just for the third floor?

A. That's correct.

Q. Just for the third floor?

A. That's correct.

Q. Did you ever, prior to writing that warrant, did you ever go out there and look at that house?

A. I looked at the structure, that's correct.

Q. How many floors was it?

A. Three floors.

Q. Did you ever look at — did you ever walk up to the third floor?

A. No.

Q. Did you ever look at the mail box?

A. No, I did not.

Q. You then checked with B.G. and E. Electric Company; is that correct?

A. That's correct.

Q. What did they tell you?

A. They told me it was listed — there was a listing on it to a Mr. Lawrence McWebb.

Q. A listing to what?

A. To the gas and electric that was in his name.

Q. For what, sir?

A. For the third floor apartment.

Q. Is that what they told you? Do you recall, before you look at that, do you have a recollection?

A. Yes, that is what I recollect.

Q. Did you check the records? Did you call down there? How did you ascertain that?

A. I called over the phone.

Q. You called over the phone?

A. That's correct.

Q. Do you know who you spoke to?

A. No, I do not.

Q. You are now aware that there were two apartments on that third floor?

A. That's correct but — no, I am not aware of that. When I called the gas and electric and I ascertained an apartment, I asked if there is a front or rear or middle room. They told me, one third floor was only listed to Lawrence McWebb.

Q. Is that right?

A. That's correct.

Q. Did you ever get anybody's name that you

spoke to over there?

A. No, I didn't.

Q. Where did you call, sir?

A. It is a special number we call, 264-2364.

Q. You checked the computer and you found it was only listed to Mr. McWebb?

A. Yes.

Q. You are positive of that?

A. I am positive.

Q. You had no idea that Harold Garrison lived up there?

A. That's correct.

Q. He is not mentioned in the warrant in any way, shape or form?

A. That's correct.

* * * *

CROSS-EXAMINATION BY MRS. HOCHBERG:

Q. Agent Marcus, when you called the BG & E Company, what was your intention?

A. To find out who the third floor was listed to.

Q. At any time did they tell you it was more than one apartment?

A. No, they didn't. When I asked for the third floor apartment, I said, is anybody listed in either front or rear? They tell you if it is listed because they have it broken down that way.

* * * *

March 3, 1983

[M2. 167-168]

CROSS-EXAMINATION OF SERGEANT JOSEPH SCHANKEN

BY MRS. HOCHBERG:

Q. Detective, on the day of the raid, at any time did Mr. Garrison or Mr. McWebb indicate there were two separate apartments in the building at any time?

A. I don't believe so, no.

Q. When did you determine that there were two separate apartments?

A. It was later on. The officers were searching and I was standing in the room with the defendants.

Q. Which room is that, by the way?

A. It was the living room to the left, Mr. McWebb's it would have been. And at that point I started to walk throughout the third floor and making sure that the search was being conducted right, to see what was going on, and at that point I was standing in the back half of the house and I took notice that there was a kitchen there, a living room, and then I went into the bedroom and I noticed that there was a bathroom in there. And then I walked towards the front of the house, and I was standing there, and I looked around and I noticed — I walked into the other living room — noticed there was another living room and then also noticed that there was another kitchen, and then when I went into the other bathroom, I was positive that at that point it could have possibly been two apartments, and at that time I had the officers stop the search immediately.

Q. Before that nobody — none of the defendants indicated to you that there was an apartment, rear and front?

A. No, they didn't.

* * * *

March 17, 1983

[T. 17-21]

TRIAL COURT'S RULING

THE COURT: Lady and gentlemen, the Court has before it a motion to suppress evidence in this case. The Defendant Garrison contends that there was no warrant to search his apartment, therefore, the items seized were illegally seized and such evidence should be suppressed. The Defendant McWebb contends that the warrant was a general warrant as it did not specify which apartment was to be searched on the third floor, and therefore, anything seized in his apartment should also be suppressed.

As I understand your argument, Mr. Polansky, —

MR. POLANKSY: Just for the record, we also allege with respect to Garrison that it is a general warrant. We would make an objection on that ground, please.

THE COURT: Yes. Now, the Defendant McWebb contends again that it was a general warrant. Now, Defendant argued that argument. That is the police knew or should have known that the Garrison apartment was separate and distinct from the apartment of the Defendant McWebb. He further characterizes the testimony of police as perjured or unworthy of belief.

Now the Court, based on what it finds to be critical evidence, makes the following findings of facts: One, that on May 21st, 1982, the police executed a search and seizure warrant for premises 2036 Park Avenue, third floor apartment. Two, the police had reliable information to believe the Defendant McWebb resided in a third floor apartment, did not know of another apartment on the third floor. Now, while it was evidence that there were a number of apartments in the building, police were unaware where these apartments were located or the character of the building.

Three, the Defendant McWebb was detained outside of 2036 Park Avenue. With the keys furnished by him, the police gained entrance through a locked front door to the building, next to the door were seven mail boxes with bells, or indicating were bells under each mailbox, but no names were reflected on any of the mailboxes. Further, McWebb's name was not visible on any of the mail boxes or any area adjacent thereto.

Next, the police were directed to the third floor by McWebb without any notice or knowledge of the layout of that area. Five, that entrance to the third floor was gained through a common marked door which gave no indication that there was more than one apartment located on said floor. There was no one to alert anyone to indicate that there were more than one apartment.

Next, that upon opening said door, police found the Defendant Garrison standing there in his night clothes. Next, seven, upon entrance to the third floor, police saw an open door to the left, later identified as

McWebb's apartment, and also an open door to the right later identified as Garrison's apartment. In fact, no door was visible at the time the police entered and the police were unaware at that time that there were two apartments.

Eight, that from that position of the hallway area leading to the two apartments, the police saw and based on their expertise located on top of the dresser in an open room to the right, a quantity of marijuana. Entrance was made into that room later identified as the apartment of Defendant Garrison where a police or the police found over the front door or the door leading to that area articles of men's clothing.

No numbers were observed by police upon entering the apartment which would alert them to a separate apartment. The room was searched, and in the apartment of Defendant Garrison was recovered a quantity of heroin and approximately four thousand dollars in cash.

Nine, also significant or significantly at the time, neither Defendant Garrison nor Defendant McWebb indicated that there were two separate apartments on the third floor. Ten, that a copy of the search and seizure warrant was given to the Defendant McWebb. The inventory listed all the evidence seized from both apartments without indicating which pieces of evidence were found in each location. Eleven, it is clear that there was a common door which could be opened at the time of the search affording access between the two apartments.

The evidence indicates that while each apartment or the occupant of each apartment could have privacy by locking this door, nevertheless, there was free access judging from all the evidence at the time the police arrived there between the two apartments, and that the Defendants so intended based on the evidence that has been submitted before me.

Now, first with respect to the inventory, the inventory related duties which must be carried out

upon execution of a warrant under Maryland Rule 780 are considered ministerial. And assuming the search was valid and the entry was lawful, a f lure to comply completely with such ministerial duties does not render the warrant defective. In this case it is clear what was taken as regarded to the inventory and the potential property rights of each of the parties who may be affected or protected.

Now, with respect to the search and seizure warrant. The general rule regarding the searches of multiple units for the purpose of satisfying the Fourth Amendment, searching two or more apartments in the same building, is no different than searching two or more completely separate houses. Probable cause must be shown for searching each house, or as the case may be, each apartment. However, there is an exception to this general rule where the multiple unit character of the premises is not externally apparent and is not known to the officer applying for or executing the warrant.

It is clear that the warrant specified the premises to be searched as the third floor apartment of the Defendant McWebb, that the officers did not know that there was more than one apartment on the third floor and nothing alerted them of such a fact until after the search had been made and the items were searched. In view of these findings, the Court will deny the motion of each Defendant to suppress the evidence. All right.

* * * *